

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

50789
97188

FILE: B-181989

DATE: June 16, 1975

MATTER OF: D. Moody & Co., Inc.

DIGEST:

Protest against DCSC solicitation provision that surplus property offerors must give 10 days notice of intent to bid before bid opening appears moot because solicitation was canceled and new solicitation issued not containing such provision.

D. Moody & Co., Inc. (Moody), has protested a provision in invitation for bids (IFB) DSA700-75-B-0298, issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio, requiring offerors of surplus property to advise the contracting officer, 10 days prior to bid opening, of their intention to offer surplus property.

The IFB was issued on July 30, 1974, and set the bid opening date for August 29, 1974. It solicited bids on 950 coupling halves manufactured in accordance with designated specifications. The solicitation included DCSC clause C07 (Government Surplus), as set forth in the Armed Services Procurement Regulation § 1-1208(d) (1974 ed.). This clause read as follows:

"(a) In the event the bid or proposal is based on furnishing items or components which are former Government surplus property or residual inventory resulting from terminated Government contracts, a complete description of the items or components, quantity to be used, name of Government agency from which acquired, and date of acquisition shall be set forth on a separate sheet to be attached to bid or proposal. Notwithstanding any information provided in accordance with this provision, items furnished by the Contractor must comply in all respects with the specifications contained herein.

"(b) Except as disclosed by the contractor in (a) above, no property of the type described herein shall be furnished under this contract unless approved in writing by the Contracting Officer."


DCSC Master Solicitation, April 1974, included the following notice after clause C07:

"NOTICE: Offerors intending to supply surplus property must notify the contracting officer by separate telegram or letter (not to be included with offer) at least ten (10) days prior to the date specified for the receipt of offers, so that the solicitation may be amended to prescribe quality assurance requirements for such property. Failure to furnish notice will preclude consideration of surplus offers unless it is determined that special quality assurance provisions are not required."

Moody basically protests the use of this notice requirement on two grounds. First, Moody suggests that the clause destroys the integrity of the IFB procedures by singling out particular bidders and imposing upon them special and unduly restrictive requirements. Second, Moody objects that the notice requirements are impossible to comply with because of the short time between synopsis of the solicitation in the Commerce Business Daily (CBD) and the time notice must be given.

Subsequent to the time Moody filed its protest, DCSC canceled the IFB, and issued a new solicitation which did not contain the 10-day notice requirement. DCSC also informed us that the requirement for advance notice would only continue to be used in the procurement of nonspecification items. This would exclude cases in which a manufacturer's part number is being procured. Further, DCSC states that such nonspecification items will always be procured under a request for proposals (RFP) rather than an IFB.

Under the circumstances, it would appear that Moody's original protest is moot and it will not be considered on the merits.


Deputy Comptroller General
of the United States